IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.3.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.No.14689 of 1999
& W.M.P.No.21240 of 1999

1. Union of India rep. by
Assistant Director General (SEA),
Department of Telecommunications,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi-110 001.

2. Director (SEA),
Department of Telecommunications,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi-110 001.

3. Assistant General Manager (Admn.),
Madras Telephones,
78, Purasawalkam High Road,
Madras-600 010. .. Petitioners

vs.

1. Hon'ble Central Administrative Tribunal,
through its Registrar,
Madras Bench, High Court Campus,
Chennai-600 104.

2. R.Venkatesan
3. Anuradha Senthil Kumar
4. Usha Raghunathan
5. K.Srinivasan
6. H.Prasad
7. R.V.Muralikrishna
8. R.Raju
9. M.Radhakrishnan
10. K.Saminathan
11. J.Padma
12. P.S.Sandhya .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, as stated therein.

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For petitioners : Mr.K.Kannan, SCGSC
For respondents : R-1 Tribunal
Mr.R.Ramesh for RR-2 to 12

ORDER

(The Order of the Court was made by R.Sudhakar,J.)

The writ petition has been filed seeking for issuance of a writ of certiorari, calling for the records of the first respondent-Central Administrative Tribunal, made in O.A.No.37 of 1997, dated 4.3.1999 and quash the same. The operative portion of the order of the Tribunal is as follows:

> " .. Therefore, the applicants are entitled for the same benefits during the period they were officiated as JAOs. So, we hold that fixing a cut-off date in extending the benefit is arbitrary.
>
> In the result, the following directions are issued:
> (i) The O.A. is allowed
> (ii) The respondents are directed to calculate the pay of the JAO along with the other allowances attached to the said post and to pay the same to the applicants for the period they officiated as JAOs.
> (iii) The above direction No.ii shall be implemented within three months from the date of receipt of a copy of this order.
> (iv) No costs."

2. The contesting respondents 2 to 12 herein are the applicants before the Tribunal. They were working in the post of Junior Accounts Officer (hereinafter referred to as "JAO") in the scale of Rs.1640-2900 for number of years. It is the case of the contesting respondents that even though they were working in the post of JAO on officiating basis, they were not paid the regular JAO's salary, but were paid basic pay of the substantive post held with officiating allowance of Rs.50/- p.m.

3. In order to get promoted to JAO Grade, the officials have to pass the JAO Examination in two parts. The contesting respondents have passed Part-I of the said examination. Since sufficient number of officials who have passed both the parts of the examination were not available, the persons like the contesting respondents who have passed Part-I of the examination were posted as JAO with special pay of Rs.50/- p.m. This was made in terms of the proceedings of the Director General of the Ministry of Communications (P & T Board) in No.75-1/76.PA/Admn-

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III/SEA, dated 14.6.1979. Originally, the amount of the special pay was fixed at Rs.25/- and the same was revised to Rs.50/- in the year 1980.

4. It is the case of the contesting respondents that for number of years, they were officiating in JAO Grade and were performing the nature of duties and shouldering the same responsibilities as performed by the persons regularly promoted as JAO and therefore, by nature of their duties and responsibilities, there should not be any discrimination in the pay scale. Even though the contesting respondents did not pass Part-II of the examination, they were performing the same nature of duties as that of the regular JAO and therefore, they should not be deprived of the pay scale of regular JAO. In this regard, several representations were made to the authorities concerned with no result.

5. It is stated that in the meanwhile, an identical case was decided on 6.1.1995 by the Ahmedabad Bench of the Central Administrative Tribunal in O.A.No.336 of 1989 and therefore, the contesting respondents pleaded for similar benefits as granted by the Tribunal in O.A.No.336 of 1989. It was therefore claimed by the contesting respondents that the benefit of the abovesaid Tribunal's order should be given to all similarly placed persons like them to avoid pay anomaly. Keeping in mind the order of the Ahmedabad Bench of the Central Administrative Tribunal, the first petitioner issued an order in No.37-3/95-SEA, dated 15.1.1996, giving the benefit of F.R.35 with effect from the date of the said order to all JAOs who have passed Part-I of the examination and officiated in the JAO post. The contesting respondents herein therefore challenged the said order dated 15.1.1996 on the ground that the said order has erroneously fixed the date of benefit to them as commencing from 15.1.1996. As per the order dated 15.1.1996, the JAOs who had officiated prior to 15.1.1996 will not be entitled to the benefit of F.R.35 and those who have officiated as JAOs after 15.1.1996 alone would be benefited. It was also submitted that the Tribunal in O.A.No.336 of 1989 granted the benefit with retrospective effect to the applicants in that case and therefore, the contesting respondents also prayed for similar relief.

6. It was also contended on behalf of the contesting respondents that since they had discharged the duties as regular JAOs, their pay scale should be the same as regular JAOs and there should be no discrimination and such discrimination is violative of Articles 14 and 16 of the Constitution.

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7. Learned counsel for the petitioners strenuously submitted that the Tribunal proceeded on an erroneous assumption that the theory of 'equal pay for equal work' will apply and since the contesting respondents have performed the same work as that of regular JAOs, they are entitled to the same benefits during the period they officiated as JAOs and therefore, the Tribunal interfered with the cut-off date, namely 15.1.1996. Learned counsel strongly relied on the decision of the Supreme Court reported in AIR 1991 SC 1145 (Ramakant Shripad Sinai Advalpalkar vs. Union of India), wherein, the Supreme Court in the case of Officer holding lower post when asked to discharge the duties of the higher post, held that it was not a promotion and the Supreme Court held that such a person does not get the salary of the higher post, but gets only that in service parlance is called as "charge allowance". The relevant observation of the Supreme Court reads as follows:

> "4. .... Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher post; but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement. .."

8. Learned counsel for the petitioners contended that in the instant case, the contesting respondents were working as Senior Accountants, Head Clerks, LSG Clerks, etc. and were given the benefit of being posted as JAOs by local arrangement and were also given the benefit of special pay. Therefore, there was no question of claiming the salary of a regular JAO, which is a higher post.

9. We have considered the various submissions made by learned counsel for the petitioners and the contesting respondents. The Tribunal apparently has not taken into consideration the ratio laid down in the abovesaid judgment of the Supreme Court as also the fact that the contesting respondents were only officiating in the post of JAO and were not holding the substantive post. Therefore, the pay equivalent to the regular JAO post does not arise.

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10. However, it is not disputed that consequent to the order of the Ahmedabad Bench of the Central Administrative Tribunal in O.A.No.336 of 1989, dated 6.1.1995, the benefits were made applicable to all such persons by the order of the first petitioner dated 15.1.1996. We find that the Ahmedabad Bench of the Central Administrative Tribunal has passed the following order:

> " .. However, due to exigency of administration, applicants have been given officiating promotion after passing Part-I of the Accounts Examination. In the circumstances, we are of the view that when they are not to be given regular pay scale of the Junior Accounts Officers as per recruitment rules their pay should be fixed under F.R.35 suitably on the analogy of Government of India, Department of Personnel and Training O.M.No.18/12/85 Est.(Pay 1) dated 18th July, 1986 and O.M.No.18/12/26/86EST (Pay-1) dated 29th July, 1987, (Government of India Order No.2 under F.R.35)."

Therefore, at the first instance, the benefit of pay fixed under F.R.35 was available to all officiating JAOs.

11. As per the instructions in the order of the first petitioner dated 15.1.1996, such persons who are officiating and not fully qualified, namely those who have completed Part-I and have not completed Part-II of the relevant examination, will be entitled to the benefit as contemplated under the said order dated 15.1.1996 as per F.R.35. However, we have no hesitation to hold that the benefit as contemplated under the order of the first petitioner dated 15.1.1996 making it applicable from 15.1.1996, is without basis. The Tribunal in the present case has dealt with the matter and had observed that such persons are entitled to the benefit under F.R.35. The order of the Ahmedabad Bench of the Central Administrative Tribunal has been given effect to. However, the only question is the date on which it will be made applicable. The decision of the Ahmedabad Bench of the Tribunal will apply equally to all employees coming under the same category throughout the country. Keeping in view this aspect, we are of the view that the benefit should have been made available at least from 6.1.1995, (i.e.) the date on which the order of the Ahmedabad Bench of the Central Administrative Tribunal was passed in O.A.No.336 of 1989. Moreover, this order dated 6.1.1995 of the Ahmedabad Bench of the Central Administrative Tribunal has been accepted on principle by the first petitioner by passing the order dated 15.1.1996 which however is now under challenge. Since the Government accepted the decision of the Ahmedabad Bench of the Central Administrative Tribunal, it should have made

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the order of the Tribunal applicable with effect from 6.1.1995.

12. One other contention of the contesting respondents was that the employees who had filed the Original Application before the Ahmedabad Bench of the Central Administrative Tribunal were given the benefit of F.R.35 one year prior to the date of the filing of the O.A. and therefore, the counsel for the contesting respondents would plead that the contesting respondents also should be given the same benefit. Such a plea cannot be entertained, as it is apparent that the contesting respondents herein have not approached the Tribunal earlier seeking such relief. The period of limitation is available to matters coming before the Tribunal. In such view of the matter, we are unable to accept the order of the present Tribunal which is impugned before this Court regarding the direction to pay the amount from the date the contesting respondents were officiating as JAOs.

13. We observe that the contesting respondents will be entitled to the benefit of pay as determined under the proceedings dated 15.1.1996 with effect from 6.1.1995, namely the date on which the order of the Ahmedabad Bench of the Central Administrative Tribunal came to be passed in O.A.No.336 of 1989.

14. Subject to the above direction and clarification, the writ petition is allowed in part. No costs. W.M.P. is closed.

cs

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Director General (SEA),
   Union of India
   Department of Telecommunications,
   Sanchar Bhavan,
   20, Ashoka Road,
   New Delhi-110 001.

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   Department of Telecommunications,
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4. The Registrar
   Central Administrative Tribunal,
   Madras Bench, High Court Campus,
   Chennai-600 104.

+ one cc to Mr. K. Kannan, SCGSC, Advocate sr no. 12794

NM(06.04.2006)

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